IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No. 34/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : October 10, 2006

Heard Mr. Dhote, learned counsel for the appellant.

This appeal is directed against judgment and decree dated 14.7.2005 passed by Second Adhoc Additional District Judge, Washim in Regular Civil Appeal No. 90/2000 dismissing the appeal filed by the appellant-defendant against judgment and decree dated 6.5.2000 passed by Joint Civil Judge, Jr. Dn. Mangrulpir in Regular Civil Suit No.157/1997.

The respondent-plaintiff filed the above suit for possession against appellant-defendant seeking recovery of possession of the suit property on the ground that the defendant had dispossessed the plaintiff from the suit property. The suit was

contested and title of the plaintiff was challenged. The trial Court, upon appreciation of evidence oral and documentary held that the plaintiff had proved his title to the suit property and that the defendant had dispossessed the plaintiff from the suit property. The appellate Court, in appeal filed by the defendant, confirmed the decree passed by the trial Court and consequently dismissed the appeal.

Mr. Dhote, learned counsel for the appellant submitted that both the Courts below have erred in law in holding that the plaintiff had proved his title and that the defendant had dispossessed him from the suit property. According to learned counsel, the findings given by both the Courts below are perverse warranting interference in second appeal.

Having considered the submissions made by learned counsel for the appellant and having perused the impugned judgments, I am unable to accept the submissions made by learned counsel for the appellant. The trial Court on the basis

of the sale deed in favour of the plaintiff was right in holding that the plaintiff has established title to the suit property and further that the defendant had dispossessed him from the suit property. In my opinion, this finding given by the trial Court is based upon proper appreciation of the evidence and, therefore, cannot be faulted. Therefore, the appellate court was also right in dismissing the appeal filed by the defendant. There are concurrent findings of fact recorded by both the Courts below which cannot be said to be perverse warranting interference in second appeal. In any case, no substantial question of law is involved in the present appeal. Hence, the appeal is rejected.

C.A. no. 2941/2006

In view of dismissal of second appeal, nothing survives in the application. Hence, the civil application is dismissed as infructuous.

JUDGE

A.